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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re G.M., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. J.D. et al., Defendants and Respondents.	E071621 (Super.Ct.No. RIJ113065) OPINION

APPEAL from the Superior Court of Riverside County. Walter H. Kubelun, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Suzanne Davidson, by appointment of the Court of Appeal, for Defendant and Appellant J.D.

Paul A. Swiller, by appointment of the Court of Appeal, for Defendant and Appellant J.M.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Prabhath Shettigar for Plaintiff and Respondent.

J.D. (mother) and J.M. (father) (collectively parents) appeal from an order terminating their parental rights to their infant son, G.M. (sometimes child). They contend that the juvenile court and the Department of Public Social Services (Department) failed to give preferential consideration to placement with relatives, in violation of section 361.3.[1] We will hold, based on controlling California Supreme Court authority, that they lack standing to raise this issue in this appeal.

I

FACTUAL AND PROCEDURAL BACKGROUND

In a previous dependency, in 2006, the mother's two older children were declared dependents and removed from her custody. She failed to reunify with them, and parental rights to them were terminated. They were adopted by the mother's aunt, S.M. (great-aunt).

In March 2017, G.M. was born prematurely when the mother had an emergency Caesarean section, due to high blood pressure. The mother tested positive for methamphetamine and alcohol.

Investigation revealed that both parents had a criminal history. The father admitted using methamphetamine and marijuana. The parents had a "transient lifestyle."

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[1] This and all further statutory citations are to the Welfare and Institutions Code.

They had had "a physical altercation where the father was stabbed with a pair of scissors."

As a result, the Department detained the child and filed a dependency petition as to him. He was placed in a licensed foster home.

Both parents wanted the father's brother, J.E. (uncle), considered for placement. A social worker contacted the great-aunt, who said she, too, was willing to care for the child. Both the great-aunt and the uncle were allowed visitation.

Meanwhile, in May 2017, at the jurisdictional/dispositional hearing, the juvenile court sustained jurisdiction based on failure to protect. (§ 300, subd. (b).) It formally removed the child from the parents' custody. It granted reunification services to the father but denied them to the mother. It found that the child's current placement was appropriate.

In October 2017, the social worker reported that Resource Family Approval (RFA) had begun assessing both the great-aunt and the uncle. However, she also reported that the child "ha[d] developed a strong bond" with the foster parents.

Sometime before December 2017, the uncle's visitation was terminated.[2] The great-aunt, however, visited regularly throughout the dependency.

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[2] It is not clear why it was terminated. At a hearing, the foster mother asserted that the child had "got[ten] hurt" during a visit with the brother. The parents object to our consideration of this assertion, however, because the foster mother was not under oath at the time.

In December 2017, at the six-month review hearing, the juvenile court terminated reunification services and set a section 366.26 hearing. It also granted the foster parents de facto parent status.[3] Once again, it found that the child's current placement was appropriate.

In March 2018, the social worker reported that the RFA assessment of the great-aunt was still ongoing. An RFA assessment of the foster parents was likewise ongoing.

In or before July 2018, both the foster parents and the great-aunt were RFA approved.

After a Concurrent Planning Review meeting, the social worker, her supervisor, and the adoptions social worker all agreed that it was in the child's best interest to remain placed with the foster parents, because he had been placed with them since birth and was bonded with them.

A hearing in October 2018 was set as both a status review hearing (§ 366.3, subd. (d)) and a section 366.26 hearing. In connection with the status review hearing, the parents stipulated that "[t]he child[ren]'s . . . current placement is appropriate." (First brackets added, second brackets in original.)

At the hearing, the trial court ruled, "As to the [status review hearing], that matter will go via stipulation . . . ." It then asked for input on the section 366.26 issues.

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[3] Pursuant to rule 8.405(b)(1)(A)(iii) of the California Rules of Court, the de facto parents have been given notice of this appeal. However, they have not sought to appear.

Counsel for the Department requested a continuance. The mother's counsel had no objection but indicated that the mother wanted the child placed with the great-aunt. She requested "an addendum regarding the RFA process with regard to this aunt." The father's counsel likewise had no objection to a continuance; however, he asked that "other relatives . . . be assessed." Counsel for the Department was willing to submit an addendum but objected to any change of placement.

The juvenile court ordered the Department to file an addendum regarding placement with the great-aunt. It then continued the section 366.26 hearing.

The Department duly filed an addendum report, repeating that the great-aunt had been RFA approved in July 2018, but the Department had determined that it was in the child's best interest to remain placed with the foster parents.

In November 2018, at the continued section 366.26 hearing, the great-aunt was present. The mother's counsel indicated again that the mother wanted the child placed with the great-aunt. The juvenile court responded: "I'd be more than happy to allow . . . your client to testify . . . as to her preference as to who should adopt the child, as to relatives. Today I would not be making any decision as to that, but that information can be noted for the record . . . ." Thus, the mother testified, among other things, that the great-aunt had "had regular visits with [the child] since he was born . . . ."

The juvenile court found that the child was adoptable and that termination of parental rights would not be detrimental to him. Accordingly, it terminated parental rights.

II

DISCUSSION

A. *Appealability*.

The parents criticize the conduct of the juvenile court and the Department with regard to placement throughout the dependency. For example, they complain that the "great aunt requested to be assessed before the jurisdiction/disposition but she was not RFA approved until over one year later." (Italics omitted.)

It is important, then, at the outset, to emphasize the limited scope of this appeal.

"'"Dependency appeals are governed by section 395, which provides in relevant part: 'A judgment in a proceeding under [s]ection 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment . . . .' [¶] This statute makes the dispositional order in a dependency proceeding the appealable 'judgment.' [Citation.] Therefore, all subsequent orders are directly appealable without limitation . . . . [Citations.] A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." [Citation.] This "waiver rule" holds "that an appellate court in a dependency proceeding may not inquire into the merits of a prior final appealable order," even when the issues raised involve important constitutional and statutory rights. [Citation.]' [Citation.]" (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1234.)

Here, in its dispositional order, the juvenile court found that the child's placement with the foster parents was appropriate. At the six-month review hearing, it found, once again, that the child's placement with the foster parents was appropriate. Likewise, at the status review hearing, it found (based on a stipulation of the parties) that the child's placement with the foster parents was appropriate. These findings were appealable when they were made, but the parents did not appeal. Thus, they are now final, binding, and unchallengeable.

This is an appeal from the orders made at the section 366.26 hearing. At that hearing, the juvenile court denied the mother's request to place the child with the great-aunt. Thus, the only issue regarding relative placement that we can even potentially reach in this appeal is whether that was error.

B. *Standing*.

"A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*In re K.C.* (2011) 52 Cal.4th 231, 238.)

Here, the parents argue that their interests are affected because, if the child is placed with a relative, they "would be able to continue having a relationship with him . . . ." This argument does not go to whether parental rights were properly terminated. Accordingly, it is insufficient to establish standing under *In re K.C.*

They also argue that the relative might choose not to adopt, which might mean that their parental rights would not be terminated.

At the section 366.26 hearing, the juvenile court was called upon to decide whether the child was adoptable, and if he was (as in fact it found), whether there was any applicable exception to termination of parental rights. (§ 366.26, subds. (c)(1), (c)(2).) The parents rely on the exception that applies when "[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child." (§ 366.26, subd. (c)(1)(A).) Thus, they argue that if the child had been placed with a relative, and if that relative had been unwilling to adopt, their parental rights might not have been terminated.

As discussed in part II.A, *ante*, however, we can review only the orders made at the section 366.26 hearing. At that point, the child was not living with a relative; a fortiori, he had not formed any relationship with a relative such that his removal from that relative would be detrimental to him. Thus, there was no possible argument that this exception applied. Even if, at the section 366.26 hearing, the juvenile court had placed the child with a relative, it would have proceeded to find the child adoptable and to

terminate parental rights. For these reasons, the court in *In re A.K.* (2017) 12 Cal.App.5th 492 rejected an essentially identical argument. (*Id*. at p. 500.)[4]

Finally, the father argues that, if a parent lacks standing to raise a failure to follow the relative placement preference, then that failure is "essentially immune from appeal."

The parents, however, could have raised the issue earlier, at the dispositional hearing or at the six-month review hearing. They could even have raised it at the status review hearing, instead of stipulating. Then, if the juvenile court ruled against them, they could have appealed. (*In re N.V.* (2010) 189 Cal.App.4th 25, 27, fn. 1.)

In addition, a relative has standing appeal from the denial of his or her request for placement. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 703-705; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034-1035; see also *In re Harmony B.* (2005) 125 Cal.App.4th 831, 838 [grandmother could appeal from denial of her request for placement but not from orders at section 366.26 hearing].) Here, the grandmother never formally asked the juvenile court to place the child with her (by filing a section 388 petition or otherwise). She could have done so, however, and if that request had been denied, she could have appealed.

We therefore conclude that the parents lack standing.

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[4] *In re Cody R.* (2018) 30 Cal.App.5th 381 also rejected an identical argument, although for a different reason: "Speculation about a hypothetical situation is not sufficient to support standing. [Citation.]" (*Id*. at p. 390.)

C. *Merits.*

Given our holding that the parents lack standing, anything we might say about the merits is dictum. Nevertheless, because our failure to address the merits might cast a shadow on trial counsel's performance, and also because no constitutional question is at stake, we comment on the merits briefly.

Welfare and Institutions Code section 361.3 creates the relative placement preference. It provides: "In any case in which a child is removed from the physical custody of his or her parents . . . , preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative . . . ." (§ 361.3, subd. (a).) "'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).)

"When it applies, section 361.3 requires social workers and juvenile courts to give 'preferential consideration' to a request by a relative for placement of a dependent child with the relative. [Citation.] "'Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.' [Citations.] The relative placement preference established by section 361.3 does not constitute 'a relative placement guarantee.' [Citation.]" (*In re K.L.* (2016) 248 Cal.App.4th 52, 66, fn. 4.)

Effective January 1, 2017, the Legislature replaced the former system of "certifying foster homes" with a new system of "approv[ing] resource families." (Legis.

Counsel's Dig., Assem. Bill No. 403 (2015-2016 Reg. Sess.), Stats. 2015, ch. 773, p. 5726; see also Welf. & Inst. Code, § 16519.5, subds. (a), (c)(5), (p), (q).)

A resource family is defined as "an individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria adopted . . . necessary for providing care for a child placed by a public or private child placement agency by court order, or voluntarily placed by a parent or legal guardian." (§ 16519.5, subd. (c).) Accordingly, the new approval process applies not only to foster families, but also to relative caregivers, nonrelative extended family members, and prospective adoptive families.

Under transition provisions, however, existing foster care licenses remained in effect at least until December 31, 2017. (§ 16519.5, subd. (p)(8)(A).) Meanwhile, a licensed foster home could become a resource family with relatively little paperwork. For example, a licensed foster home that successfully completed an adoptive home study before January 1, 2018 could become a resource family. (§ 16519.5, subd. (p)(4)(A).) Similarly, a licensed foster home that had a child in placement at any time during 2017 and that successfully completed a family evaluation could become a resource family. (§ 16519.5, subd. (p)(4)(B).) Here, the foster parents already had a foster care license, and they soon became a resource family.

When the Department first placed the child, it could not place him with the great-aunt, because she did not yet have RFA approval. However, it could place him with the foster parents, even before they obtained RFA approval, because they were already

licensed. Once the great-aunt did obtain RFA approval, the Department duly considered her for placement; however, it determined that it was in the child's best interest to keep him placed with the foster parents, because he was bonded with them.

Meanwhile, the uncle's visitation had been terminated. While the reason for this may be unclear, the only reasonable conclusion is that he was not suitable for placement.[5]

Thus, the Department did all that the relative placement preference required. Moreover, the juvenile court did not abuse its discretion by accepting the Department's determination. (See *Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863-864.)

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[5] The mother briefly asserts that the juvenile court ordered the Department to "complete[]" an assessment of the great-aunt, but the Department failed to do so.

Not so. Actually, the mother's counsel requested "an addendum regarding the RFA process with regard to [the great-]aunt." The juvenile court granted the request; it ordered the Department to file "an updated addendum as to relative assessments . . . ." The Department therefore filed an addendum noting that the great-aunt had been RFA approved, but that it had determined that placement with her was not in the child's best interest.

This complied with the juvenile court's order. Certainly no one objected to the addendum or argued otherwise below.

III

DISPOSITION

The appeal is dismissed.

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RAMIREZ
P. J.

We concur:

FIELDS
J.

RAPHAEL
J.